SENATE BILL No. 414

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-7-12.

Synopsis: Joint economic development commission. Allows a county and a municipality located within the county to establish a joint economic development commission.

Effective: July 1, 2002.

Nugent

January 10, 2002, read first time and referred to Committee on Rules and Legislative Procedure.

Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 414

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 36-7-12-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 4.5. (a) The fiscal body of a county and the fiscal body of a municipality located within the county may establish a joint department of economic development. The county fiscal body and the municipal fiscal body must adopt identical ordinances creating the joint department.**

(b) A joint department shall be controlled by a joint commission known as "______ Economic Development Commission" designating the names of the municipality and county.

(c) A joint commission consists of the following seven (7) members:

(1) One (1) member selected and appointed by the municipal executive.

(2) Two (2) members nominated by the municipal fiscal body and appointed by the municipal executive.

(3) One (1) member selected and appointed by the county

executive.

(4) Two (2) members nominated by the county fiscal body and appointed by the county executive.

(5) One (1) member nominated by the fiscal body of the most populous municipality located in the county and appointed by the county executive.

(d) The joint economic development commissioners take office upon their appointment. The commissioners' terms run from February 1 after their original appointment for a period of:

(1) three (3) years, if selected by the municipal or county executive;

(2) two (2) years, if nominated by a municipal fiscal body; and

(3) one (1) year, if nominated by the county fiscal body.

SECTION 2. IC 36-7-12-4.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 4.6. Unless otherwise expressly indicated, a provision of this chapter applicable to an economic development commission or economic development commissioner applies to a joint economic development commission or joint economic development commissioner.**

SECTION 3. IC 36-7-12-4.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 4.7. (a) This section applies to a unit that forms a joint commission with another unit under section 4.5 of this chapter.**

(b) Any legal obligation entered into by a unit, including those set forth in section 4.8 of this chapter:

(1) to implement this chapter; and

(2) before the unit forms a joint commission with another unit;

remains the sole obligation of the unit unless amended by agreement of all the parties to the obligation.

SECTION 4. IC 36-7-12-4.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 4.8. (a) A participating county or municipality may withdraw from a joint department at the end of a fiscal year by repealing the ordinance establishing the joint department and filing a copy of the repealing ordinance with the other participating unit.**

(b) The county and municipality are jointly responsible for all legal obligations entered into jointly by the county and municipality before the date of dissolution for the purposes set

forth in this chapter, including the following legal obligations:

(1) Contracts entered into by the units.

(2) Repayment of loan agreements entered into by the units.

(3) Payment of bonds issued by the units.

(4) Any other legal obligation entered into by the units.

(c) The municipal executive and county executive shall enter into a written agreement concerning the division of the joint commission's assets.

SECTION 5. IC 36-7-12-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 15. An economic development commissioner is not entitled to any salary, but is entitled to:

(1) reimbursement for expenses necessarily incurred in the performance of his duties; and

(2) a per diem allowance for each day he attends a commission meeting, if that allowance:

(A) does not exceed the per diem allowance for members of the general assembly; and

(B) is authorized by the fiscal body **or fiscal bodies** that established the commission.

SECTION 6. IC 36-7-12-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 19. (a) The fiscal body of ~~a~~ **each** unit may levy a special tax to pay the costs of operation of its economic development commission, but this tax may not be used to pay any of the costs attributable to the acquisition and leasing or sale of economic development or pollution control facilities, except for advancements to be reimbursed from bond proceeds.

(b) Any unit having money raised by taxation for any type of industrial aid or development as authorized by any other statute may transfer that money to its department of economic development to carry out the purposes of this chapter.

(c) Before a tax is levied under subsection (a) or money is transferred under subsection (b), the economic development commission must:

(1) adopt a proposed budget for the use of the money it will receive from the levy or transfer; and

(2) submit the budget to the fiscal body of the unit that established the commission **or to both fiscal bodies of units establishing a joint commission under section 4.5 of this chapter.**

The fiscal body may review and modify the proposed budget. **Both fiscal bodies of units establishing a joint commission may review the proposed budget and jointly modify the proposed budget.**

SECTION 7. IC 36-7-12-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 24. (a) The economic development commission shall hold a public hearing, for itself and on behalf of the fiscal body of the unit **or fiscal bodies of the units** proposing to issue the bonds, on the proposed financing of the economic development or pollution control facilities, after giving notice by publication in accordance with IC 5-3-1 in the unit **or units** proposing to issue the bonds, and in the municipality, if any, where the facilities are to be located. However, in the case of a program financing under section 18.5 of this chapter that is funded with taxable bonds, the public hearing requirement of this section need not be complied with until the economic development or pollution control facilities to be financed with program funds have been identified.

(b) Upon findings by the commission that:

(1) the proposed financing will be of benefit to the health or general welfare of the unit **or units** proposing to issue the bonds, or the unit where the facilities are to be located, or both; and

(2) the proposed financing complies with this chapter;

the commission shall, by resolution, approve the financing, including the form and terms of the financing agreement, the bonds and the trust indenture (if any). The secretary of the commission shall transmit the resolution to the fiscal body of the unit **or fiscal bodies of the units** proposing to issue the bonds.

SECTION 8. IC 36-7-12-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 25. (a) If the fiscal body of the unit **or fiscal bodies of the units** proposing to issue the bonds ~~finds~~ **find** that the financing approved under section 24 of this chapter will be of benefit to the health or general welfare of the unit **or units** proposing to issue the bonds, the unit where the facilities are to be located, or both, and ~~complies~~ **comply** with this chapter, ~~it~~ **the unit or units** may adopt an ordinance approving the proposed financing in the form that the financing was approved by the economic development commission or as modified by the fiscal body **or fiscal bodies** in ~~its~~ **their** discretion.

(b) The ordinance may also authorize the issuance of bonds payable solely from revenues and receipts derived from the financing agreement or from payments made under a guaranty agreement by developers, users, or related persons. The bonds are not in any respect a general obligation of the unit **or units,** nor are they payable in any manner from revenues raised by taxation.

(c) The financing agreements, trust indentures (if any), and bonds must be executed by the:

(1) executive; and

(2) clerk of the fiscal body;

of ~~the~~ **each** unit approving the financing. These officials may by their execution approve changes therein without further approval of the fiscal body **or fiscal bodies** or the economic development commission of the unit **or units** if such changes do not affect terms contained in the ordinance pursuant to section 27(a)(1) through (a)(10) of this chapter and if the ordinance authorizes these officials to approve such changes.

SECTION 9. IC 36-7-12-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 26. (a) A financing agreement approved under this chapter must provide for payments in an amount sufficient to pay the principal of, premium (if any), and interest on the bonds authorized for and allocable to the financing of the facilities. However, interest payments for the anticipated construction period, plus a period of not more than one (1) year, may be funded in the issue.

(b) The term of a financing agreement may not exceed forty (40) years from the date of any bonds issued under the financing agreement. However, a financing agreement does not terminate after forty (40) years if a default under that agreement remains uncured, unless the termination is authorized by the terms of the financing agreement.

(c) If ~~the~~ **a** unit **or units** ~~retains~~ **retain** an interest in the facilities, the financing agreement must require the user or the developer to pay all costs of maintenance, repair, taxes, assessments, insurance premiums, trustee's fees, and any other expenses relating to the facilities, so that the unit **or units** will not incur any expenses on account of the facilities other than those that are covered by the payments provided for in the financing agreement.

SECTION 10. IC 36-7-12-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 27. (a) Bonds issued by a unit **or units** under section 25 of this chapter may be issued as serial bonds, term bonds, or a combination of both types. The ordinance of the fiscal body **or fiscal bodies** authorizing bonds, notes, or warrants, or the financing agreement or the trust indenture approved by the ordinance, must provide:

(1) the manner of their execution, either by the manual or facsimile signatures of the executive of ~~the~~ **each** unit and the clerk of ~~the~~ **each** fiscal body;

(2) their date;

(3) their term or terms, which may not exceed forty (40) years;

(4) their maximum interest rate if fixed rates are used or the manner in which the interest rate will be determined if variable or

adjustable rates are used;
(5) their denominations;
(6) their form, either coupon or registered;
(7) their registration privileges;
(8) the medium of their payment;
(9) the place or places of their payment;
(10) the terms of their redemption; and
(11) any other provisions not inconsistent with this chapter.

(b) Bonds, notes, or warrants issued under section 25 of this chapter may be sold at public or private sale for the price or prices, in the manner, and at the time or times determined by the unit **or units.** The unit **or units** may advance all expenses, premiums, and commissions that it considers necessary or advantageous in connection with their issuance.

(c) The bonds, notes, or warrants and their authorization, issuance, sale, and delivery are not subject to any general statute concerning bonds, notes, or warrants of units.

(d) An action to contest the validity of bonds, notes, or warrants issued under section 25 of this chapter may not be commenced more than thirty (30) days after the adoption of the ordinance approving them under section 25 of this chapter.

SECTION 11. IC 36-7-12-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 28. (a) The fiscal body of a unit **or units** issuing bonds under this chapter may secure them by a trust indenture between the unit **or units** and a corporate trustee. The corporate trustee may be any trust company, national bank, or state bank that is in Indiana and has trust powers.

(b) A trust indenture under this section may:
(1) mortgage the land, any interest in land, or the facilities on account of which the bonds are issued;
(2) pledge all or part of the payments to be received by the unit **or units;**
(3) set forth the rights and remedies of the trustee and the holders of the bonds, including provisions restricting the individual right of action of the holders;
(4) contain provisions considered reasonable for protecting and enforcing the rights and remedies of the holders or lenders, including covenants setting forth duties of the unit **or units** and the economic development commission regarding:
(A) the construction of the facilities; and
(B) the custody, safeguarding, application, and investment of revenues received or to be received by the unit **or units** on

account of the facilities financed by the issuance of the bonds;
(5) contain provisions regarding the investment of money, the sale, exchange, or disposal of property, and the manner of authorizing and making payments, notwithstanding any general statute relating to these matters; and
(6) provide for the establishment of reserve funds from the proceeds of the bonds or from other sources to secure the prompt payment of the principal and interest on them.

SECTION 12. IC 36-7-12-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 30. (a) If the fiscal body of the unit finds that a refunding of outstanding bonds issued under this chapter would be of benefit to the health and general welfare of the unit and would comply with this chapter, it may authorize the issuance of bonds in accordance with IC 5-1-5 to refund those outstanding bonds. A savings to the issuing body as provided in IC 5-1-5-2 is not required for the issuance of the refunding bonds, or the issuance of bonds to refund refunding bonds.

(b) **If the fiscal bodies of units establishing a joint commission jointly find that a refunding of outstanding bonds issued under this chapter would be of benefit to the health and general welfare of the units and would comply with this chapter, the fiscal bodies may jointly authorize the issuance of bonds in accordance with IC 5-1-5 to refund the outstanding bonds. A savings to the issuing bodies as provided in IC 5-1-5-2 is not required for the issuance of the refunding bonds or the issuance of bonds to refund refunding bonds.**

(c) Refunding bonds issued under this section are payable solely from revenues and receipts derived from:
(1) financing agreements with the users or developers of the facilities originally financed by the outstanding bonds, or related persons; or
(2) from payments made under guaranty agreements by developers, users, or related persons.

The financing agreements or guaranties may be new financing agreements or guaranties or amendments of the original financing agreements or guaranties.

~~(c)~~ **(d)** Refunding bonds issued under this section are not in any respect a general obligation of the unit **or units,** nor are they payable in any manner from revenues raised by taxation.

~~(d)~~ **(e)** Sections 18(b), 23, and 24 of this chapter do not apply to the issuance of refunding bonds under this section.

SECTION 13. IC 36-7-12-36 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 36. In order to:

(1) disseminate information describing the benefits of all economic development commissions;

(2) provide for efficient operations of all commissions; and

(3) allow the department of commerce, on a recommendation basis, to assist all commissions in their endeavors;

each commission shall file a report, within thirty (30) days after its initial meeting and on each subsequent January 31, with ~~the~~ **each** fiscal body that it serves and with the director of the department of commerce. These reports must be in writing on a form prescribed by the department of commerce and must contain all information required in that form.